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File No. O. Home Guard 47

Legal **DEPARTMENT**

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Opinions under the Bombay Home Guards Act, 1941

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M.A.S.

In his letter No. 4952 dated the 7-6-1947 the Commandant, Home Guards, Greater Bombay, refers to the provision of sec. 4 of the Bom. Home Guards, Act, 1947 and to rule 4 of the Bom. Home Guards Rules 1946 and states as follows;-

"It seems to me that under the above rule (rule 4) all the powers of the Comm. of Police under sec. 4 are delegated to the Commandant and can be exercised by him subject only to such orders as the Comm. of Police Bombay may deem necessary to issue. No Special delegation of the powers in writing by the Comm. of Police to the Commandant is necessary". The R.L.A. is requested to advise whether the Commandant's interpretation is correct.

Under cl.(a) of sec. 8 of the Bom. Home Guards Act 1947 the Provl. Govt. may make rules providing for the exercise by any police officer or the Commandant or other officer of the Home Guards of the powers conferred by sec. 4 on the Comm. of Police, Bombay, or the District Supdt. of Police. Rule 4 of the Bom. ~~Home~~ Home Guards Rules 1946 made under sec. 8 of the Bom. Home Guards Ordinance, 1946 provides that subject to the orders of the Comm. of Police Bombay or the Dist. Supdt. of Police, Ahm'd as the case may be, or a police officer authorised by the said officers, the Commandant may exercise all powers conferred under sec. 4 of the Ordinance (now the Act) on the Comm. of Police, Bombay or the Dist. Supdt. of Police, Ahmedabd. Though the Bom. Home Guards Rules, 1946 are the rules made under sec. 8 of the Bom. Home Guards Ordinance 1946, in pursuance of the proviso to sec. 10 of the Bom. Home Guards Act, 1947 they being rules which were in force before the coming into operation of the Act are deemed to be made in pursuance of the Act and as such continue in force. Rule 4 may be, therefore,

be deemed to have been made under sec. 8 (2) of the Act.

Rule 4 authorises the Commandant to exercise all powers conferred under sec. 4 of the Act on the Comm r. of Police, Bombay subject to this restriction that he shall not exercise powers which are inconsistent with the orders, if any, issued by the Comm r. of Police, Bombay Rule 4 contemplates statutory conferment of the powers of the Comm r. of Police, Bombay under sec. 4 of the Act, on the Commandant and does not appear to authorise the Comm r. of Police Bombay to delegate his powers to the Commandant. Consequently, the question of delegation of powers in writing by the Comm r. of Police to the Commandant does not survive.

Reply may be

"Seen and returned.

The view expressed by the Commandant, Home Guards, Greater Bombay in his letter No. 4952 dated the 7th June 1947. is correct.

Id. /E.T.B. 8/7
A.L.R.

A.L.R. Id./ 11/7

I agree. Reply may be as proposed by

A.A.S. R.L.A. 11/7

Id/ R.T. K. 9/1 11/7.

U.O.R. to H.D. No. 7199 dt. 14 7/1947

Office of the R.L.A.

The question raised for the consideration of the P.L.A. is whether there is any legal objection to applying the Bombay Home Guards Act, 1947 to all districts in the Province and to constituting the force thereafter wherever it is considered feasible.

Sub-section (3) of section 1 of the Bombay Home Guards Act, 1947 gives discretion to Government to bring the Act into force in all or any of the districts on such date as may be specified in the notification. No doubt under sub-section (1) of section 2 Government shall have to constitute for the districts notified under sub-section (3) of section 1 a voluntary body called the Home Guards. But the Act prescribed no time limit within which such body should be constituted. Nor is the obligation under subsection (1) of section 2 such as can be enforced against Government. Consequently there would be no legal objection to the proposal. The Government may bring the Act into force in all ~~the~~ districts by a notification under sub-section (3) of section 1 and then proceed to constitute the force wherever it is considered feasible.

Id- P.E.L. 16/9

~~O.C~~ Remembrancer of Legal Affairs.

U.R. to H.D. No, 9230 dated the 17th September 1947